

25-6368

# 331

30 December 1953

Memorandum for: SR/Administration

Attention:

[Redacted]

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From:

Office of General Counsel

Subject:

Dispatch No. [Redacted]

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1. This office would prefer not to coordinate on this dispatch and is returning it for revision.

2. In our opinion, the dispatch is somewhat less than clear and raises an unnecessary opportunity for argument. For example, under present Agency policies those employees who perform two years continuous service abroad will receive home leave regardless of whether they return TDY from their overseas post or PCS headquarters. We believe the Agency has the authority and the legal power to transfer an employee PCS headquarters subsequent to the fulfillment of two years continuous service abroad, thereby precluding the granting and taking of home leave. This belief flows from the fact that the Americanization and rehabilitation which is the basis for the original Congressional authorization of home leave can occur via PCS headquarters with the result that there would be no need of home leave. This has not been the recognized administrative practice and we do not think the question should be raised in a dispatch such as this.

3. For those personnel who plan to return overseas upon completion of home leave, in our opinion this leave is a right, the timing of which is open to administrative discretion on the part of the Agency. We, therefore, disagree with your statement that home leave is a privilege the approval of which is subject to headquarters determination.

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4. We also question the statement contained in the dispatch concerning the proposed amendment to existing regulations on this subject. As you may know, this office gave an opinion to the DD/A that, aside from present Agency regulations, the Agency had the legal power to allow leave in the United States for personal convenience of employees without such leave breaking the concept of continuous service abroad. This office also signed as coordinating officer on a cable to [ ] originating in EE Division which contained similar information. In view of the proposed alteration of the existing regulation, which will restate Agency policy, another cable was subsequently dispatched to [ ] directing that the first cable be disregarded pending the issuance of the new regulation. Your dispatch contains a statement of the supposed contents of the proposed regulation and in our opinion it would be unwise to make such a statement until the regulation has appeared or unless qualified as a prediction.

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5. The structure of the final sentence of the dispatch in our opinion requires some revision since it indicates that the employee is the acting element in a PCS transfer. In our opinion, the Government is the proper acting element in this type transfer.

6. Unless there is some overriding requirement for immediate action, we would suggest that the issuance of this dispatch await determination of the exact contents of the proposed revision of [ ] An attempt to prognosticate at this stage would in our opinion further confuse the situation.

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[ ]

OGC/TMF:imm

Attachment - Proposed Dispatch

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Orig - addressee cc: Chrono cc: Subject ✓ cc: [ ] OGC

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# MISSING PAGE

ORIGINAL DOCUMENT MISSING PAGE(S):

Attachment